ORIGINAL

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Attorneys For Defendant
ALLSTAR MARKETING GROUP, LLC

FILED
07 NOV 26 AM 10: 37
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: PDC DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RACHEL GASSO, on behalf of herself and all consumers similarly situated,

Plaintiffs,

v.

ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC, ALLSTAR MARKETING CORP., and DOES 1-25, inclusive,

Defendants.

CASE NO.: '07 CV 2235 BTM (BLM)

DEFENDANTS' NOTICE OF REMOVAL OF ACTION

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Allstar Marketing Group, LLC ("Allstar") hereby removes this action pursuant to 28 U.S.C. §§ 1332(d), 1441(b), 1446, and 1453 from the Superior Court for the State of California, County of San Diego, to the United States District Court for the Southern District of California, and respectfully states to the Court the following:

VENABLE LLP
2049 CENTURY PARK EAST, #2100
LOS ANGELES, CALIFORNIA 90067
(310) 229-9900

CR

1. As set forth below, this Court has original jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) ("CAFA"), because this matter is a putative class action in which the amount in controversy exceeds the sum of $5,000,000, exclusive of costs and interest, and is between citizens of different states.

2. By filing this Notice of Removal, Allstar does not intend to waive, and hereby reserves, any objection as to service, personal jurisdiction, and all other defenses. Allstar reserves the right to supplement and amend this Notice of Removal.

3. No previous application has been made for the relief requested herein.

BACKGROUND

4. On or about October 26, 2007, Plaintiff Rachel Gasso, on behalf of herself and all consumers similarly situated (together, "Plaintiffs"), served upon the Defendants, by mail outside the State of California, a summons and complaint, which were filed in the Superior Court of the State of California, County of San Diego, on October 17, 2007, with the caption *Rachel Gasso, on behalf of herself and all consumers similarly situated v. Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, Allstar Marketing Corp., and Does 1-25, inclusive,* Case No. 37-2007-00057263-CU-BT-NC (the "Complaint"). Copies of the Complaint and other papers filed thus far in this action are attached hereto as Exhibit A.

5. This action is a putative class action relating to the advertising and sale of Allstar's "Auto Cool" products.

BASIS FOR REMOVAL

Sufficient Diversity of Citizenship Exists

6. 28 U.S.C. § 1332(d) requires only minimal diversity of citizenship in order to substantiate federal jurisdiction over class action cases. 28 U.S.C. § 1332(d)(2). Here, Plaintiff Rachel Gasso is a California resident who purports to sue on behalf of a nationwide class, and Allstar is a New York limited liability company with its main office in the State of New York. (See Ex. A [Declaration of Rachel Gasso re Venue]; Ex. B [Declaration of Henny Karreman, ¶ 3]).

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7. The Complaint includes fictitious defendants, "Does 1-25," whose citizenship is ignored for removal purposes. 28 U.S.C. § 1441(a).

Class Action Fairness Act
Amount in Controversy Threshold Is Satisfied

8. 28 U.S.C. § 1332(d)(6) provides that "[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs." When aggregated, the claims of the putative individual class members in this action exceed $5,000,000, exclusive of interest and costs.

9. Plaintiffs seek to pursue the claims in this action on behalf of an alleged nationwide class of persons who purchased Allstar's Auto Cool products from January 1, 2003 to the present. Ex. A (Complaint, ¶¶ 12, 16). Plaintiffs allege that the "Plaintiff Class includes many thousands of members," id. at ¶ 18, and seek an order requiring the Defendants "to identify each purchaser of one or more Auto Cool(s) and to directly refund to that purchaser the price paid, plus any and all related costs associated with said purchase such as taxes, shipping and handling." Id., Prayer for Relief ¶ 1. Plaintiffs also seek recovery of attorneys' fees in an unspecified amount, injunctive relief, and punitive damages. Id., Prayer for Relief ¶¶ 2-5.

10. The total value of the monetary relief sought by Plaintiffs in this putative class action is uncertain. In the prayer for relief, Plaintiffs seek restitution of all monies paid for Auto Cool products by members of a putative nationwide class without any limitation, but elsewhere they allege that "the aggregate damages are less than $5,000,000." Ex. A (Complaint, ¶ 6). It is thus uncertain whether, in determining whether the $5,000,000 jurisdictional threshold of § 1332(d)(2) is met, the test to be applied is the "preponderance of evidence" test set forth in *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (where plaintiff fails to plead a specific amount of damages, the defendant seeking removal must prove by a preponderance of evidence that the amount in controversy has been met), or the "legal certainty" test set

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forth in *Lowdermilk v. United States Bank National Ass'n*, 479 F.3d 994, 999-1000 (9th Cir. 2007) (where a plaintiff in good faith pleads an amount in controversy of less than $5,000,000, the party seeking removal must prove with legal certainty that CAFA's jurisdictional amount is met).

11. To assist the Court in determining that subject matter jurisdiction exists over this action under CAFA, even if the *Lowdermilk* standard is applied, Allstar is submitting herewith as Exhibit B the Declaration of its Chief Financial Officer, Henny Karreman. This Declaration sets forth facts which establish to a legal certainty that the value of Plaintiffs' claim for restitution is in excess of $14.5 million, and therefore CAFA's jurisdictional amount is met.

Notice of Removal Is Timely Filed

12. This notice of removal has been timely filed. The Complaint was served by mail to out of state parties on October 26, 2007, pursuant to California Code of Civil Procedure § 415.40, under which service is deemed complete on the tenth day after mailing. This Notice of Removal was filed within 30 days. See 28 U.S.C. § 1446(b).

Consent of All Defendants Not Required

13. Removal of this class action does not require the consent of all defendants. 28 U.S.C. § 1453(b). The undersigned counsel is still trying to ascertain the legal status of Defendants Allstar Marketing Group, Inc. and Allstar Marketing Corp., and understands that these entities are not active companies and never sold any Auto Cool products, but to the extent their consent to removal is capable of being given, they consent to removal.

Notice to Plaintiffs and State Court

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiffs, and a copy will be filed with the Clerk of the Superior Court for the State of California for the County of San Diego.

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(310) 229-9900

WHEREFORE, Allstar respectfully removes this action from the Superior Court of the State of California for the County of San Diego to this Court pursuant to 28 U.S.C. §§ 1332(d), 1441(b), 1446, and 1453

Dated: November 21, 2007

VENABLE LLP

By: [signature]
Jeffrey M. Tanzer
Attorneys for Defendant
Allstar Marketing Group, LLC

VENABLE LLP
2049 CENTURY PARK EAST, #2100
LOS ANGELES, CALIFORNIA 90067
(310) 229-9900

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

17 ... 03
CLERK ... COURT
... CA

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Allstar Marketing Group, Inc., Allstar Marketing Group, LLC., Allstar Marketing Corp., and Does 1-25, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Rachel Gasso, on behalf of herself and all consumers similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court, North County Judicial District
325 South Melrose Drive, Vista, CA 92081

CASE NUMBER:
(Número del Caso):
37-2007-00057263-CU-BT-NC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Alexander M. Schack, Esq. (858) 485-6535
Law Offices of Alexander M. Schack, 16870 West Bernardo Drive, Suite 400, San Diego, CA 92127

DATE: OCT 17 2007 *(Fecha)* Clerk, by *(Secretario)* M. Bates , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
American LegalNet, Inc. www.USCourtForms.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Alexander M. Schack, Esq. Bar No. 99126
Lee T. Patajo, Esq. Bar No. 230667
Law Offices of Alexander M. Schack
16870 West Bernardo Drive, Suite 400, San Diego, CA 92127
TELEPHONE NO.: (858) 485-6535 FAX NO.: (858) 485-0608
ATTORNEY FOR (Name): Plaintiff Rachel Gasso

FOR COURT USE ONLY

OCT 17 AM 11:03

CLERK-SUPERIOR COURT ... CO, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 325 South Melrose Drive
MAILING ADDRESS: 325 South Melrose Drive
CITY AND ZIP CODE: Vista, CA 92081
BRANCH NAME: North County Judicial District

CASE NAME:
Rachel Gasso v. Allstar Marketing Group, Inc., et al.

CIVIL CASE COVER SHEET

☑ Unlimited (Amount demanded exceeds $25,000) ☐ Limited (Amount demanded is $25,000 or less)

Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2007-00057263-CU-BT-NC
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☑ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☑ Substantial amount of documentary evidence
   d. ☑ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify)*: 4 - B&P Code Section 17200 (Unfair Competition Law), B&P Code Section 17500 (false advertising), CC Section 1750 (Consumer Legal Remedies Act fraud
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: October 10, 2007
Alexander M. Schack
(TYPE OR PRINT NAME)

Alexander M. Schack
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

American LegalNet, Inc.
www.FormsWorkflow.com

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 325 S. Melrose MAILING ADDRESS: 325 S. Melrose CITY AND ZIP CODE: Vista, CA 92081 BRANCH NAME: North County TELEPHONE NUMBER: (760) 806-6347	
PLAINTIFF(S) / PETITIONER(S): Rachel Gasso	
DEFENDANT(S) / RESPONDENT(S): Allstar Marketing Group, Inc. et.al.	
GASSO VS. ALLSTAR MARKETING GROUP, INC.	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00057263-CU-BT-NC

Judge: Michael B. Orfield

Department: N-28

COMPLAINT/PETITION FILED: 10/17/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

Alexander M. Schack, Esq., Bar No. 99126
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Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

RACHEL GASSO, on behalf of herself and all consumers similarly situated, Plaintiffs, v. ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC., ALLSTAR MARKETING CORP., and DOES 1-25, inclusive, Defendants.	CASE NO.37-2007-00057263-CU-BT-NC CLASS ACTION DECLARATION OF RACHEL GASSO RE VENUE [UNLIMITED CIVIL CASE]

I, Rachel Gasso, declare that:

1. I am the Plaintiff in this action and reside in San Diego County, California.

2. I declare that the Complaint herein is filed in a proper place for the trial thereof, which is the county in which Defendants are doing business, or where a substantial portion of relevant transactions occurred pursuant to C.C.P. § 395(b), B&P § 17203 and/or C.C. § 1780(c).

I declare under penalty of perjury that the foregoing is true and correct and executed on October 12, 2007, at ESCONDIDO, California.

Rachel Gasso

Rachel Gasso, Declarant

Alexander M. Schack, Esq., Bar No. 99126
Lee T. Patajo, Esq., Bar No. 230667
LAW OFFICES OF ALEXANDER M. SCHACK
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127
Tel: (858) 485-6535
Fax: (858) 485-0608
Attorney for Plaintiffs

OCT 17 AM 11:03

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

RACHEL GASSO, on behalf of herself and all consumers similarly situated, Plaintiffs, v. ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC., ALLSTAR MARKETING CORP., and DOES 1-25, inclusive, Defendants.	CASE NO. **37-2007-00057263-CU-BT-NC** CLASS ACTION COMPLAINT 1. Violation of the Unfair Competition Law 2. Violation of False Advertising Law 3. Violation of Consumers Legal Remedies Act 4. Fraud and Deceit

Plaintiff, Rachel Gasso, on behalf of herself and the general public, and all consumers similarly situated, and demanding trial by jury, complains and alleges upon information and belief as follows:

INTRODUCTION

1. This civil consumer protection representative action is brought to remedy violations by Defendants Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, and Allstar Marketing Corp. (hereinafter "Allstar") of state consumer protection, false advertising and unfair competition statutes in connection with Defendants' course of conduct over the last four years in the manufacture, sale, marketing, and distributing of their "Auto Cool" product to consumers. Defendants' employ

misleading representations and have failed to disclose material information for its claims associated with the use of its product Auto Cool, wherein it is represented that such product keeps your car cool no matter how long it has been left in the sun. Such claims are untrue. In fact, the very name of the product, Auto Cool, is deceptive, as the product does not keep your auto cool.

2. Defendants are part of the internet products shopping industry that has experienced rapid growth over the past decade and is now a multi-billion dollar industry. Defendants' marketing and advertising of its Auto Cool product is deceptive, misleading and injurious to consumers.

3. Defendants are and have been aware of the misrepresentations used in supporting their claims. In fact, Defendants have not adequately disclosed to consumers the fact that Auto Cool does not work as advertised. Defendants' decision to inadequately inform consumers of the lack of benefits associated with Auto Cool is likely due to the fact that Defendants' charged as much as $19.99 to consumers for their product and their revenues from such sales have been in the millions of dollars. Thus, Defendants knowingly and recklessly withheld important information from consumers in conscious disregard of consumers' rights and Defendants' responsibilities. Such actions were, in whole or in part, undertaken to preserve Defendants' extraordinary revenues from Auto Cool and thus constitute fraud, malice, and oppression directed against consumers of Auto Cool.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to California Business and Professions Code §§ 17203, 17204, 17500, Civil Code § 1780 and other provisions of California law. This Complaint is not based on federal law. The amount in controversy for each member of the general public is less than $75,000.00.

5. Venue as to each Defendant is proper in this Court pursuant to California Code of Civil Procedure §§ 395 and 395.5, California Civil Code § 1780, and California Business and Professions Code §§ 17202 and 17203. Defendants either maintain an office, transact business, have an agent, or are found in the County of San Diego and are within the jurisdiction of this Court. The unlawful acts alleged herein had a direct effect on consumers within the State of California and, more particularly, within the County of San Diego.

THE PARTIES

A. Plaintiff

6. Representative Plaintiff Rachel Gasso is, and at all times herein mentioned, a resident of the County of San Diego, who, during the relevant period, purchased Auto Cool for her own use and not for resale. Plaintiff used the product as directed, and it did not work as advertised. The damages or losses as to Plaintiff individually do not exceed $75,000.00, however calculated, and the aggregate damages are less than $5,000,000, and no federal questions are asserted herein.

B. Defendants

7. Defendants Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, and Allstar Marketing Corp. (hereinafter "Allstar") develops, manufactures, markets or sells Auto Cool. Defendants' transact substantial business throughout the United States and in the State of California. Defendants' principal place of business is in the State of New York. The acts complained of, which are the subject matter of this action, occurred, in part, in the State of California and in this county. During the period of time covered by this Complaint, Defendants engaged in the business of, among other things, designing, manufacturing, marketing, selling, advertising, distributing, promoting or otherwise placing into the stream of commerce, directly or indirectly, its Auto Cool product.

8. The true names and capacities, whether individual, corporate, associate, representative, or otherwise of Defendants named herein as DOES 1-25 are unknown to Plaintiff at this time, and are therefore sued by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through 25 when Plaintiff has such information. Each of the DOES 1-25 is in some manner legally responsible for the violations of law alleged herein.

CONSPIRACY, AGENCY, JOINT VENTURE, ALTER EGO

9. Each of the Defendants named herein, including DOES 1-25, acted as the co-conspirator, agent, joint venturer or alter ego of or for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein or is otherwise liable.

10. The acts charged in this Complaint as having been done by Defendants and the DOE Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives,

while actively engaged in the management of the Defendants' businesses or affairs.

11. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 *et seq.*, Plaintiff brings this action individually and on behalf of the California general public.

12. This action may be properly maintained as a national class action, pursuant to *Wershba v. Apple Computer, Inc.* (2001) 89 Cal.App.4th 324, and the provisions of § 382 of the California Code of Civil Procedure and Civil Code § 1781 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. Plaintiff reserves the right to amend this Complaint for such a national class.

FACTUAL ALLEGATIONS

DEFENDANT'S MISLEADING AND DECEPTIVE PRACTICES

13. Defendants are part of the internet products shopping industry that has experienced rapid growth over the past decade and is now a multi-billion dollar industry. California consumers comprise one of the largest markets in the United States for their product shopping on the internet and is one of the largest markets in the world. In California alone, it is estimated that more than $1,000,000,000 in products are purchased over the internet each year. As such, Defendants aggressively market their internet product to such California and U.S. consumers through advertising.

14. Defendants have engaged in a full-scale marketing and advertising campaign aimed at creating the perception that Auto Cool:

> "Keeps your parked car cooler."
>
> "Keeps your car cool no matter how long it has been left in the sun."

This statement is misleading, as is the very name of the product. In fact, the Auto Cool does not cool your car, does not keep a parked car cooler, and does not keep your car cool no matter how long it has been left in the sun. Defendants' marketing, however, clearly conveys and emphasizes the cooling benefits of its product, disregarding the overwhelming information indicating otherwise. As a result, consumers are not adequately informed of the true facts. Nothing in Defendants' marketing or advertising clearly or conspicuously informs consumers that they are purchasing a product that will not cool your car.

///

15. Defendants are and have been aware of the lack of truth about the benefits of their Auto Cool product. In fact, consumer reviews and testing throughout the U.S. reveal that the Auto Cool simply does not work as advertised. Defendants have not adequately informed consumers about the facts associated with the purchase of its Auto Cool product. Thus, Defendants knowingly or recklessly withheld important information from consumers in conscious disregard of consumers' rights and Defendants' corporate responsibilities. Such actions were, in whole or in part, undertaken to preserve Defendants' extraordinary revenues from Auto Cool and constitutes fraud, malice, and oppression directed against consumers of Defendants' Auto Cool product.

CLASS ACTION ALLEGATIONS

16. The Class is defined as:

> All individuals who purchased one or more Auto Cool devices from January 1, 2003, to the present. Specifically excluded from the Plaintiff Class are the Defendants herein; officers; directors or employees of Defendants; and any entity in which the Defendants have a controlling interest; the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact or assignees of the Defendants, and any federal, state or local governmental entity. Also specifically excluded are any justice, judge, judicial officer, court personnel or juror assigned to any part of this case.

17. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 *et seq.*, Plaintiff brings this action individually, on behalf of the general public, and on behalf of all individuals similarly situated.

18. This action may be properly maintained as a class action, pursuant to the provisions of § 382 of the California Code of Civil Procedure and Civil Code § 1781 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. Plaintiff reserves the right to amend this Complaint for such Class as the following criteria are met:

A. Numerosity: The Plaintiff Class is so numerous that individual joinder of all members is impractical under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, based upon the amount of trade and commerce in the internet products shopping industry, Plaintiff is informed and believes that Defendants sell hundreds of thousands of dollars worth of the Auto Cool annually. Plaintiff is informed and believes that the Plaintiff Class includes many thousands of members.

B. Common Questions of Law and Fact: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over any questions which affect only individual members of the Plaintiff Class. These common questions of law and fact include, without limitation:

(1) Whether Defendants' business acts or practices violated the Unfair Competition Law, § 17200 *et seq.* of the California Business and Professions Code ("UCL");

(2) Whether Defendants' conduct violated the False Advertising Law, § 17500 *et seq.* of the California Business and Professions Code ("FAL");

(3) Whether Defendants' conduct violated the Consumers Legal Remedies Act, § 1750 *et seq.* of the California Civil Code ("CLRA");

(4) The class-wide nature of Defendants' course of conduct;

(5) The amount of additional revenues and profits obtained by Defendants attributable to their unlawful conduct;

(6) The appropriate nature of class-wide equitable relief including corrective and remedial action;

(7) Whether the members of the Plaintiff Class are entitled to restitution as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such restitution;

(8) Whether the members of the Plaintiff Class have sustained damages as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such damages; and

(9) Whether the members of the Plaintiff Class are entitled to punitive and exemplary damages as a result of Defendants' acts of fraud, malice and oppression or in conscious disregard of the right of Plaintiff and the Plaintiff Class, and, if so, what is the proper amount of such punitive and exemplary damages.

C. Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff has been injured in fact and has lost money or property as a result of the

Defendants' acts. Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of Defendants' common course of conduct in violation of the laws complained of herein. The injuries of each Class Member were caused directly by Defendant's wrongful conduct in violation of the law as alleged herein.

D. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the Plaintiff Class. Plaintiff purchased the Auto Cool during the Class Period, and is an adequate representative of the Class as she has no interests which are adverse to the interests of absent Class Members. Plaintiff has retained counsel who have substantial experience and success in the prosecution of complex consumer protection class actions of this nature.

19. The policies, procedures and practices described herein relating to the marketing of Defendant's Auto Cool are part of a common course of conduct of unlawful deceptive acts and practices undertaken by Defendants. As a result, the issues affecting Plaintiff and all members of the Plaintiff Class in common predominate over those which affect only the interests of any individual Class Member.

20. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the Plaintiff Class is impractical. Furthermore, as the damages or injuries suffered by each individual member of the Class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the court system of adjudications of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

For Violation of the Unfair Competition Law, California

Business and Professions Code §§ 17200 *et seq.*

(Against All Defendants)

21. Plaintiff on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 20 hereof.

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22. All marketing, advertising, publicity and promotional efforts as described herein undertaken by Defendants concerning the Auto Cool product, constitute unfair competition, in violation of California Business and Professions Code §§ 17200 *et seq.*, the Unfair Competition Law ("UCL"). Defendants have and continue to engage in conduct that is unlawful, unfair or fraudulent through a pattern of concealment that misleads and deceives the public with respect to the true nature of its Auto Cool product, by a pattern of failing to inform consumers and by misleading the consumer about the efficacy of the product through false and misleading statements and deceptive and unfair policies, procedures and acts.

23. The acts, omissions, misrepresentations, practices and nondisclosures of Defendants, as alleged herein, constituted and continue to constitute unfair, unlawful and/or fraudulent business practices within the meaning of Business and Professions Code § 17200 *et seq.*, including, but in no way limited to, the following:

A. the violation of the Business and Professions Code § 17500 *et seq.* ("FAL"); the violation of Civil Code § 1750 *et seq*, the Consumer Legal Remedies Act ("CLRA"), set forth in this Complaint;

B. Defendants' acts, omissions, misrepresentations, practices, and nondisclosures as set forth in this Complaint, whether or not in violation of the laws set forth herein, are otherwise unfair, unconscionable, unlawful and fraudulent;

C. Defendants' acts and practices are unfair to consumers within the meaning of Business and Professions Code § 17200 *et seq.*, and

D. Defendants' acts and practices are fraudulent within the meaning of Business and Professions Code § 17200 *et seq.*

24. Plaintiff, the general public, and the members of the Plaintiff Class, accordingly are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

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SECOND CAUSE OF ACTION

Violation of False Advertising Law, California

Business and Professions Code §§ 17500 *et seq.*

(Against All Defendants)

25. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 24 hereof.

26. The advertising, marketing and other promotional efforts undertaken by Defendants constitute advertising devices disseminated by Defendants from and into California, which contain and continue to contain statements concerning the efficacy of Defendants' Auto Cool product that are untrue and/or misleading in violation of California Business and Professions Code §§ 17500 *et seq.*, the False Advertising Law ("FAL"), including but not limited to the above.

27. Plaintiff, the general public, and all others similarly situated, accordingly are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

THIRD CAUSE OF ACTION

Violation of Consumers Legal Remedies Act

California Civil Code § 1750 *et seq.*

(Against All Defendants)

28. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 27 hereof.

29. The acts and practices heretofore described were intended to result in the sale of products and services to the consuming public. These acts violated, and continue to violate, the CLRA (Cal.Civil Code § 1750 *et seq.*) in at least the following areas:

A. representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;

B. representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

C. advertising goods or services with intent not to sell them as advertised;

D. representing that services have characteristics, uses, benefits or quantities which they do not have; and

E. representing that the subject of the transaction has been supplied in accordance with a previous representation when it has not.

30. Plaintiff seeks an order enjoining the above-described wrongful acts and practices of Defendants and awarding restitution, rescission and/or disgorgement of Defendants' revenues and profits from the sale of its Auto Cool product.

31. Pursuant to Civil Code § 1782(a), on or about August 27, 2007, Plaintiff, through her counsel, made a written demand on behalf of herself and the potential Plaintiff Class that Defendants cease and desist their unlawful conduct and offer to make appropriate restitution, correction or remedy, including but in no way limited to, giving notice to all persons who purchased the product and giving such other notice as may be required under Civil Code § 1782. Defendants failed to agree as provided by law to cease and desist, to give proper notice or to offer to make proper restitution in any manner. Pursuant to Civil Code § 1782(d), Plaintiff prays for compensatory and punitive damages under the CLRA and CCP § 382 on behalf of herself and all similarly situated consumers, in an amount according to proof at trial.

32. As a direct and proximate result of Defendants' violations of the CLRA as alleged herein, Plaintiff, the general public, and the Plaintiff Class have suffered actual damages in an amount to be proven at trial, including, *inter alia*:

A. the infringement of their legal rights as a result of being subjected to the common course of conduct alleged herein;

B. Plaintiff and the Class were induced to purchase Auto Cool from Defendants, which they would not have done had they been fully informed of Defendants' acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Complaint, in violation of, *inter* *alia*, the CLRA; and

C. Plaintiff and the members of the Class were induced to rely on Defendants' deceptive representations and omissions to their detriment as a result of Defendants' conduct as alleged in this Complaint, in violation of, *inter alia*, the CLRA.

33. Defendants' acts, statements, representations, policies and procedures as described herein were knowingly deceptive and were made with conscious disregard of the effects upon consumers. Defendants are required by law to make adequate disclosure of the true effects of their goods to potential consumers. Defendants failed to do so in order to conceal their acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Complaint, and to induce customers to purchase their Auto Cool product from Defendants. Accordingly, Defendants engaged in acts of fraud, malice and oppression or in conscious disregard of the rights or safety of Plaintiff and members of the Plaintiff Class such that an award of punitive damages is justified in order to make an example of Defendants, to punish Defendants, and to deter Defendants, and others, from engaging in the same or similar conduct. Plaintiff, and the members of the Plaintiff Class, seek an award of punitive damages in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

Fraud in the Inducement

(Against All Defendants)

34. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 33 hereof.

35. The Defendants made material representations and omissions to Plaintiff which included but were not limited to the statements that Auto Cool is a cooling ventilation system that claims to keep your car cooler no matter how long it has been left in the sun and that Auto Cool uses solar power to keep the heat out. In fact, the name of the product itself is deceptive, "Auto Cool", as it does not keep your auto cool. Defendants knew these representations were false or should have known them to be false.

36. The Defendants intended that Plaintiff rely on said representations in Plaintiff's decision

to purchase their Auto Cool product.

37. The Plaintiff justifiably relied on the representations, and has performed all of the actions requested of her.

38. Despite this, Plaintiff was damaged thereby as a direct result of Defendants' misrepresentations, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, the general public, and the Class, pray for judgment against Defendants as follows:

1. for an order requiring Defendants to identify each purchaser of one or more Auto Cool(s) and to directly refund to that purchaser the price paid, plus any and all related costs associated with said purchase such as taxes, shipping and handling;

2. for other injunctive and equitable relief under California statutory law, including but not limited to, restitution and disgorgement, as alleged herein;

3. for compensatory and punitive damages against Defendants for violation of the CLRA if Defendants do not comply with the CLRA demand letter in a timely fashion in an amount according to proof at trial;

4. for compensation, punitive and exemplary damages against Defendants in an amount according to proof at trial and sufficient to punish Defendants and to deter others from similar wrongdoing;

5. that Plaintiff and other members of the Plaintiff Class recover their costs of suit, including reasonable attorney's fees; and

6. for such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

A jury trial in this matter is hereby demanded.

LAW OFFICES OF ALEXANDER M. SCHACK

Dated: October 4, 2007

Alexander M. Schack
Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00057263-CU-BT-NC CASE TITLE: Gasso vs. Allstar Marketing Group, Inc.

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (760) 726-4900.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 325 S. Melrose	
MAILING ADDRESS: 325 S. Melrose	
CITY, STATE, & ZIP CODE: Vista, CA 92081-6695	
BRANCH NAME: North County	
PLAINTIFF(S): Rachel Gasso	
DEFENDANT(S): Allstar Marketing Group, Inc. et.al.	
SHORT TITLE: GASSO VS. ALLSTAR MARKETING GROUP, INC.	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2007-00057263-CU-BT-NC

Judge: Michael B. Orfield Department: N-28

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

☐ Court-Referred Mediation Program

☐ Private Neutral Evaluation

☐ Private Mini-Trial

☐ Private Summary Jury Trial

☐ Private Settlement Conference with Private Neutral

☐ Court-Ordered Nonbinding Arbitration

☐ Court-Ordered Binding Arbitration (Stipulated)

☐ Private Reference to General Referee

☐ Private Reference to Judge

☐ Private Binding Arbitration

☐ Other (specify): ______________________

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______________________

____

____

Alternate: (mediation & arbitration only) ______________________

Date: ______________________ Date: ______________________

______________________ ______________________
Name of Plaintiff Name of Defendant

______________________ ______________________
Signature Signature

______________________ ______________________
Name of Plaintiff's Attorney Name of Defendant's Attorney

______________________ ______________________
Signature Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 10/17/2007 ______________________
JUDGE OF THE SUPERIOR COURT